

March 23, 2004

The Honorable L. Alma Mansell
President of the Senate
and
The Honorable Martin R. Stephens
Speaker of the House

Dear President Mansell and Speaker Stephens:

This is to inform you that on March 23, 2004, I decided, after careful consideration and study, to veto H.B. 115, CARSON SMITH SPECIAL NEEDS SCHOLARSHIPS, and have transmitted it to the lieutenant governor for filing.

I am very sympathetic to the families of special needs children. I want to see that special needs children receive the educational assistance they need, and so I have left the \$1.4 million funding intact for the Legislature to re-authorize. I have asked the State School Board to set up a system to contract with special needs providers. This will accomplish the educational objectives of the bill for special needs children.

Unfortunately, H.B.115 raises constitutional questions, federal law compliance and funding issues that I cannot allow to become law.

The attached legal analysis outlines two constitutional questions. First, the use of Uniform School Fund money for Utah State Board of Education (USBE) administration of the program appears to be a violation of Utah Const., Art. X, Sec. 5(4). Second, the bill places USBE as the oversight body for a program of private schools and private school students without designating the schools or programs as part of the public education system. This raises serious questions concerning the constitutional role and authority of the USBE.

Parents who place their child in a private school normally give up the rights and safeguards afforded them by the federal Individuals With Disabilities Education Act (IDEA). However, due to the extensive involvement of the USBE in the program created by HB 115, it is unclear to what extent IDEA rights and safeguards will apply to those students who receive a scholarship and attend a private school. Should it be determined that IDEA law does apply, multiple unanswered questions concerning administration and funding of the program are raised.

The bill creates a three year entitlement for a student when a scholarship is awarded.

However, the bill provided only one-time funding for fiscal year 2005. Language in the bill states that, “The legislature shall annually appropriate money to the board from the General Fund to make scholarship payments.” These provisions imply ongoing funding requirements for a future Legislature.

Sincerely,

Olene S. Walker
Governor